

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
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In the Matter of)
)
Revision of Part 22 of the)
Commission's Rules Governing the)
Public Mobile Services)

CC Docket No. 92-115

To: The Commission

COMMENTS OF CENTEL CELLULAR COMPANY

Centel Cellular Company ("Centel") hereby submits its comments on the Notice of Proposed Rulemaking in the above-captioned proceeding.¹ The Notice proposes to revise Part 22 of the Commission's Rules in order "to make our rules easier to understand, to eliminate outdated rules and unnecessary information collection requirements, to streamline licensing procedures and to allow licensees greater flexibility in providing service to the public."²

I. INTRODUCTION

Centel generally supports this proposed rewrite of the Part 22 Rules.³ The reorganization of the rules proposed in

¹ Revision of Part 22 of the Commission's Rules Governing the Public Mobile Services, Notice of Proposed Rulemaking, 7 FCC Rcd 3658 (1992) [hereinafter "Notice"].

² Id.

³ Centel Cellular Company, through its subsidiaries and affiliates, owns a controlling interest in 42 cellular MSAs and 24 RSAs throughout the country. As such, these comments will focus exclusively on those proposed rules applicable to cellular carriers.

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the Notice should facilitate comprehension of and adherence to applicable licensee regulations and requirements. Moreover, many of the substantive modifications proposed should act to ease the burden on both Part 22 licensees and the Commission without sacrificing necessary regulatory oversight.

Nevertheless, Centel submits that certain modifications of the proposals are necessary to reconcile the new rules with recent decisions in Commission rulemaking proceedings. Further, certain other proposals may require clarification to ensure that the Commission's desired effects are achieved. Centel's suggestions toward this end are presented below.

II. THE REWRITE SHOULD REFLECT REGULATIONS ADOPTED IN THE COMMISSION'S UNSERVED AREAS AND CELLULAR RENEWAL PROCEEDINGS

In its recent rulemaking proceedings regarding unserved areas⁴ and cellular renewals,⁵ the Commission adopted a number of new rules which significantly modified the means of calculating protected cellular service areas, the procedures for modifying cellular systems, and the mechanism for renewing a cellular license. Despite the fact that these rules are currently in effect, several key provisions are omitted or not reflected accurately in the proposed rewrite.

⁴ See CC Docket No. 90-6.

⁵ See CC Docket No. 90-358.

For example, the Unserved Areas Second Report and Order permitted cellular carriers in markets whose five-year fill-in period had not yet expired to expand their CGSA (or create a second CGSA) using an FCC Form 489 notification so long as the proposed contours did not extend beyond the market boundary (see Section 22.9(d)(7)(iii)).⁶ Similarly, the Second Report and Order also permitted carriers to use an FCC Form 489 notification for modifications resulting in extensions outside of the market, but for which they had the consent of the adjacent carrier (see Section 22.9(d)(7)(iii)).⁷ However, Proposed Section 22.123(e)(2)(i)(A) suggests such modifications under the proposed rules would require a Form 401 application instead of a simple notification.

The Notice additionally fails to reflect rules and procedures adopted to govern cellular renewals.⁸ Among these are provisions regarding award of a renewal expectancy (Section 22.941(a)), qualifications of competing applicants (Section 22.940), and criteria for comparative renewal

⁶ Amendment of Part 22 of the Commission's Rules to Provide for Filing and Processing of Applications for Unserved Areas in the Cellular Service and to Modify Other Cellular Rules, Second Report and Order, 7 FCC Rcd 2449, 2461 (1992).

⁷ Id.

⁸ Amendment of Part 22 of the Commission's Rules Relating to License Renewals in the Domestic Public Cellular Radio Telecommunications Service, Report and Order, 7 FCC Rcd 719 (1992).

proceedings (Section 22.941). Further, the comparative hearing procedures in Proposed Section 22.935 differ markedly from those embodied in current Section 22.942.

The text of the Notice provides no indication that these newly adopted requirements were intended to be substantively modified in this proceeding. Centel understands that the Commission staff was informed of these omissions at the Telocator/CTIA Forum on the Part 22 Rewrite. Centel urges the Commission to ensure that the final rewrite of Part 22 accurately reflects the substance of these provisions.

III. OTHER PROPOSALS REQUIRE ADDITIONAL CLARIFICATION

In addition to streamlining and reorganizing existing rules, the Notice also proposes a number of substantive modifications to Part 22. While Centel supports many of these as easing the regulatory burdens on both licensees and the Commission, several proposals raise particular concerns or require clarification.

As an initial matter, the Notice proposes to eliminate the requirements for filing FCC Form 489 notifications for interior transmitters.⁹ Centel generally supports efforts to lessen the regulatory burden on cellular licensees. Nevertheless, this particular proposal raises several concerns. First, the Notice states that transmitters for

⁹ Notice at 3661.

which an FCC Form 489 is not filed would not be protected from interference. Centel submits that this lack of protection negates any benefit arising from the elimination of the filing requirement. To this point the Commission has consistently afforded cellular carriers interference protection within their entire service area. Indeed, given that internal transmitters may experience interference and that system modifications may cause an initially interior transmitter to become exterior,¹⁰ it is essential that this policy be maintained.

Second, elimination of this filing requirement would mean that the Commission would no longer have accurate records as to the extent and nature of service provided in particular cellular systems. As such, customers, competitors, licensees experiencing interference, and other interested members of the public would be unable freely to access system information. If the proposal is adopted, the Commission may want to consider adopting a procedure for maintaining updated system information that would not be too burdensome on either licensees or the Commission.

Proposed Section 22.167(a) permits applicants to apply to use certain assigned but unused channels. However, the Commission should clarify that this "finder's preference"

¹⁰ For example, the decommissioning of an exterior transmitter could cause this result.

does not apply to the cellular service or, alternatively, would apply only to the full block of spectrum assigned to a particular cellular licensee. Unlike other Part 22 licensees, a cellular carrier does not use all its assigned frequencies everywhere throughout its system. Indeed, if it did, the quality of cellular service would be detrimentally affected. Further, penalizing a cellular licensee for not operating at capacity would also discourage innovations which could maximize efficient use of spectrum. For these reasons, the Commission must clarify that the proposed finder's preference does not apply to cellular frequencies.

Proposed Section 22.121(d) states that if an authorization automatically terminates because of failure to commence service to the public, the Commission will not consider another application to operate a station on the same channel in the same area by that applicant until one year after the authorization terminated. Nevertheless, such a prohibition would affect numerous situations where the previous authorization expired due to circumstances beyond the applicant's control, such as delays in receiving zoning approval, difficulties in securing leasing arrangements, etc. As written, the prohibition would also apply to circumstances in which a licensee sought to abandon one site in favor of a neighboring location that could provide better coverage. In such cases, the applicant's efforts to improve its system

would be prohibited to the detriment of the public. Centel urges the Commission to clarify that this refiling prohibition would not apply to authorizations terminated for such reasons.

Proposed Section 22.105 expands the Commission's already burdensome microfiching requirements to require that all applications on standard forms, regardless of length, and any other filings of more than three pages be microfiched. This expansion of the microfiching requirements would be extremely burdensome on all Part 22 licensees. Microfiching not only adds substantial costs to application preparation but also delays filings and thus the date on which modifications may be implemented. Accordingly, Centel urges the Commission to refrain adopting this proposed modification.

IV. CONCLUSION

Centel generally supports the proposed rewrite of Part 22 of the Commission's Rules as an effective means of streamlining current regulations and reducing the regulatory burden on licensees and the Commission. However, it urges the Commission to reconcile its proposals with rules recently adopted in the Unserved Areas and Cellular Renewal

proceedings and consider the impact of particular proposals
on the provision of cellular service to the public.

Respectfully submitted,

CENTEL CELLULAR COMPANY

By: Kevin C. Gallagher (att)
Kevin C. Gallagher
Vice President - Legal/
External Affairs and
Assistant Secretary
Centel Cellular Company
8725 West Higgins Road
Suite 330
Chicago, IL 60631
(312) 399-2348

Its Attorney

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